Representing Florida's 12th District
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Opening Statement of Chairman Charles T. Canady
on H.J. Res. 78, "The Religious Freedom Amendment"
October 28, 1997

In the past three years, the Subcommittee on the Constitution has held a number of hearings both here in Washington and across the United States examining "religious liberty and the bill of rights" and proposals to amend the Constitution to further protect religious freedom. In the course of those hearings, the Subcommittee heard compelling testimony from individuals complaining that they had been singled out for adverse treatment because of their religion. What emerged was a pattern of discrimination based on ignorance and animosity toward men and women of faith.

The record from our hearings is clear -- there is a fundamental misunderstanding of what the Constitution requires with respect to the prohibition on the government establishing any religion. This misunderstanding is of constitutional proportions and, thus, a constitutional amendment is the most comprehensive means to remedy it.

Court rulings have turned "separation of church and state" into hostility toward religion. The First Amendment, as written, needs no improvement. The First Amendment, as interpreted by the Courts, including the U.S. Supreme Court, has strayed both with respect to the meaning of the establishment clause and the free exercise clause, and the relationship between the two.

The Supreme Court's rhetorical establishment of a "high and impregnable" wall of separation of church and state has led Courts and public officials to act as though the First Amendment requires rather than prohibits discrimination against religious expression and exercise. Religious citizens should not have to languish for years in costly litigation just to obtain equal treatment in their schools and workplaces, or to obtain access to the public square or programs which are available to the public at large.

In just the past few months, we have heard of additional problems where people of faith are singled out for adverse treatment because of their religion. I'll cite just three examples.

- Earlier this month, Oklahoma University removed the website for a group of Christian faculty members from the University web server. While the university generally gives campus groups the opportunity to include their website on the

university's server, this benefit has been denied to a Christian group.

- Earlier this year, public school officials in North Carolina supported a teacher who forbid two students from bringing their Bibles to class and banned an informal discussion of Bible-related topics during non-class time.

- University administrators at two separate schools have told students that they can't hold resident assistant jobs if they actively live out their Christian faith. One student was told she could not conduct Bible studies in her dorm room because of her status as a resident assistant. She was also told that she could not even attend a Bible study, regardless of its location. The other student was forbidden to have religious discussions with students or other staff. Both students have been threatened with termination if they do not cease to engage in these religious activities.

Situations such as these are sometimes resolved at the local level without having to resort to litigation. Unfortunately, it is often the case that even where these cases are litigated to the level of the Federal Appeals Courts the rhetoric of strict separation so permeates our jurisprudence that it trumps established principles of free speech and Supreme Court precedent to the contrary. Here are just a few examples:

- In 1993, the U.S. Supreme Court in *Lamb's Chapel v. Center Moriches Union School District* held that a local school board's policy allowing use of school property after hours for a variety of purposes, but prohibiting access for a religious use was a violation of the free speech clause. The Supreme Court reversed the decision of the Second Circuit to hold that the First Amendment's Establishment Clause neither required nor justified such discrimination against religious speech. Nevertheless, just a few weeks ago, the Second Circuit again upheld a New York City School District's denial of access to a middle school auditorium sought by a church for worship services on Sunday mornings even though the schools are open to a wide variety of other public uses.

- In 1995, the Sixth Circuit upheld a district court decision in which a student's chosen topic for a research paper was rejected because she wanted to write on the "life of Jesus Christ" even though approved subjects included "spiritualism," "reincarnation," and "magic throughout history." The teacher stated that "the law says we are not to deal with religious issues in the classroom." Despite the existence of Presidential guidelines that would dictate the opposite result, the Sixth Circuit upheld the award of a "zero" for the student and the U.S. Supreme Court refused to review the ruling of the lower court.

- In *Garnett v. Renton School District*, high school students who wanted to form a prayer and Bible study club after school asked permission and were denied. The case took nine years and involved three trips to the district court, four trips to the court of appeals, and two trips to the Supreme Court before the students ultimately won vindication of their rights. At the end, opponents of the students made the extraordinary argument that the school district should shut down its entire extracurricular program rather than allow the students to meet.

- The Ninth Circuit has pending before it a case involving student speech at graduation -- the highest academic achievers among graduates are chosen to speak at graduation and each student individually decides whether to speak and determines the content of his or her speech, including whether it will include any religious expression at all. Even though the student alone determines the content of the speech, the Court will decide whether this arrangement violates the establishment clause.

As Professor Michael McConnell has explained, "in a well-meaning but mistaken commitment to what they think is a constitutional ideal of a secular public sphere -- teacher, principals, school boards, and other public officials often engage in discrimination against religious expression.

H.J.Res. 78 seeks to correct this fundamental problem.

It would allow students to engage in group classroom prayer on a voluntary basis and would allow prayer at high school graduation ceremonies as long as the government did not require that the prayer occur or seek to set forth the text of the prayer. The amendment would allow the people to "recognize their religious beliefs, heritage, or traditions on public property."

In addition, the amendment prohibits government discrimination against religion and denial of equal access to benefits on account of religion. Religious schools and charities will not be denied access to public programs because of their religious nature, nor will they be required to engage in self-censorship as a condition of program participation. The provisions of the amendment would apply, for example, where a state enacts a program of aid that funds all private schools, but explicitly disqualifies participation by religious providers. Should a state decide to provide support only to its own public schools, however, the amendment would not require that it support religious schools.

I want to commend Representative Istook for his tireless dedication to this issue. He has been persistent in his pursuit of this amendment and to his commitment to crafting a solution that will obtain widespread support. I also want to thank Chairman Hyde for his dedication to the cause of religious liberty and his work on this issue. We are here today at his request that the Subcommittee move forward with this amendment.

Finally, I will note that Mr. Hutchinson will offer an amendment in the nature of a substitute which has previously been distributed to the members. Mr. Hutchinson's substitute will, I believe, serve to clarify certain important aspects of H.J. Res. 78.

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